

November 26, 2002

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Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007-2996

Re: *In re. U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Docket No. T-00000A-97-0238

Dear Ms. Scott:

Qwest, now under new management, appears to have begun to back-slide with respect to positions it has previously articulated in this matter. Eschelon Telecom, Inc. ("Eschelon") would like to receive clarification as to Qwest's positions, as well as assurance that Qwest is not retaliating against Eschelon for its opposition to Qwest before this Commission and the Federal Communications Commission ("FCC"). A group of recent communications from Qwest has caused concern that Qwest's new management is back-sliding and the latter may be the case. Eschelon requested assurance that this is not the case from Qwest directly (*see* Exhibits E-Q and E-T)¹ but received none.

Eschelon will briefly outline the communications here.

1. UNE-P Interconnection Agreement Amendment (see Ex. E-N).

More than two years ago, Eschelon raised with this Commission, as an issue to be resolved in this proceeding, Qwest's insistence on an "anti-competitive prerequisite," before making UNE-P available, of requiring an unnecessary interconnection agreement amendment. *See* Eschelon's Comments Addressing UNE Combinations, *In re. U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Arizona Docket No. T-00000A-97-0238 (Sept. 21, 2000) ("Sept. 2000 Comments") (Exhibit E-21), pp. 4-9.² As Eschelon then indicated, Qwest had taken the position that an amendment was required, even though Eschelon has an interconnection

¹ Eschelon begins with Exhibit E-N, because it filed Exhibits E-1 through E-21 and E-A through E-M previously in this docket. To avoid confusion with exhibits filed earlier, Eschelon will continue to number exhibits consecutively.

² *See also* Verification of Garth Morrisette (same) (both documents are part of Eschelon Exhibit 4-1 in this proceeding, AZ Docket No. T-00000A-97-0238, and were identified in the July 30-31, 2002 workshop in this matter as Exhibit E-21.).

agreement with Qwest in every one of the states in which it operates, including Arizona,³ that requires Qwest to provide UNEs “in combination” in accordance with the Act, FCC rules, and state law.⁴ *See id.* p. 5. Eschelon operates under the same interconnection agreement today. The interconnection agreement provides that Commission-approved rates will apply (*see* Att. 1, § 1),⁵ and therefore Qwest is recovering its costs for each element that Eschelon orders pursuant to the contract and Commission orders and rules.

In response to concerns raised by CLECs about Qwest’s anti-competitive prerequisite, Qwest announced at the outset of the October 2000 workshop in this matter that it had changed its position. Qwest said it agreed to combine elements, including UNE-P and EEL, on behalf of CLECs in all 14 of its states. *See* Tr. Vol. I, p. 8, lines 7-10 (Oct. 10, 2002). Qwest said that it would offer UNE-P and EEL combinations in every one of its states at cost-based rates. *See id.* at p. 28, line 25 – p. 29, line 1. Eschelon specifically requested, and received from Qwest, assurance that Qwest was going to do so without requiring an amendment to the interconnection agreement:

“MS. CLAUSON: You may have gone beyond this, but am I correct in saying that you’re going to do combinations, you’re going to drop the requirements for a contract amendment if we already have a contract?

MR. CRAIN: That is – yes.

MS. CLAUSON: Yes. So that is something we’ve been asking for for a long time, and we appreciate that.”

Id. at p. 31, line 21 – p. 32, line 4. The Qwest-Eschelon interconnection agreement has not changed since Qwest made this representation. The same contract terms allow Eschelon to order the UNE-P combination today that should have allowed Eschelon to do so then. Because Qwest announced its position in October of 2000 that it would offer UNE-P to CLECs at cost-based rates without a contract amendment, the parties did not further litigate the issue in this proceeding.

³ *See* Agreement for Local Wireline Network Interconnection and Service Resale Between Advanced Telecommunications, Inc. and U S WEST Communications, Inc., for the State of Arizona, Agreement No. CDS-000106-0212; Decision No. 62489 (Jan. 20, 2000) (“Agreement”). The Agreement deals specifically with issues such as the definition of “Combinations,” *see id.* Part A, p. 4; cooperative testing of combinations, *see id.* ¶ Att 3, Para 18.1; service order process requirements for combinations, *see id.* Att. 5, ¶ 2.2.2.1, and other issues.

⁴ *See* Eschelon-Qwest Interconnection Agreements: AZ, Part A, ¶ 21 & Att. 3, ¶¶ 3.3 & 18.1; CO Part A, ¶ 8.1 & Att. 3, ¶¶ 2.4 & 15.1; MN, Part A, ¶ 20 & Att. 3, ¶ 14.1; OR, Part A, ¶¶ 19 & 36 & Att. 3, ¶ 14.1; UT, Part A, ¶ 21 & Att. 3, ¶¶ 3.3 & 18.1; WA, Part A, ¶ 21.1 & Att. 3, ¶¶ 1.2.2 & 18.1.

⁵ Approved rates do not also include Qwest proposed rates that have not been approved by the Commission (such as rates that have been allowed to go into effect as part of an SGAT, to which Eschelon is not a party, but which were not approved by the Commission). *See* Exhibit E-9, pp. 20-21; *see also* Eschelon’s FCC Comments, 02-314, (Oct. 15, 2002), p. 43, note 54.

This month, however, Qwest has changed its position without proper notice and due process to Eschelon and without correcting the record in this case. On November 12, 2002, Qwest's sales representative for Eschelon's account sent a unilateral announcement to Eschelon stating not only that an interconnection agreement amendment is required for UNE-P but that Eschelon's "refusal" to sign one creates an "*untenable*" situation. *See* Exhibit E-N, p. 2 (emphasis added). Eschelon does not understand how its reliance on Qwest's affirmative representations to the Commission on the record in this case can be described as either a "refusal" or "untenable."

Commission staff should ask Qwest to explain for the record the date its position changed, the basis for the change, and the process used to unilaterally impose this position upon Eschelon without bringing this information to the Commission. Eschelon also seeks assurance that Qwest will not unilaterally impose rates not approved by this Commission on Eschelon without adhering to proper procedures, such as requesting approval of such rates from the Commission.

Qwest's letter (Exhibit E-N) is an example of not only back-sliding in positions, but also of other issues raised by Eschelon during the July 2002 workshop. In its letter, Qwest confirms that it unilaterally imposes proposed rates, even when those rates are not approved by the Commission or negotiated by the parties. If Qwest does not have an approved rate, Qwest has not proven a cost basis for claiming a rate. *See* Exhibit E-9, pp. 20-21. What Qwest describes as a "surrogate" is simply an unfounded claim for a rate that Qwest has never proved it is owed. What Qwest describes as an out-of-process "scrub" is simply an effort to attempt to obtain enough information to verify the bills and correct inaccuracies in the bills. *See* Exhibit E-N, pp. 4-5. Eschelon has a contractual right to accurate and timely bills from Qwest. (*See* Att. 5, ¶ 4.3.6.) As Eschelon described at the workshop, however, Qwest's bills contain inaccuracies and are difficult to verify.⁶

In addition, Qwest's letter (Exhibit E-N) demonstrates Qwest's unilateral imposition of rates. Qwest simply announces that, if Eschelon does not agree to the amendment that Qwest said in this case was not needed, Qwest will unilaterally "employ the SGAT rates in place as of April, 2002,"⁷ for UNE-P elements that are not covered in Eschelon's ICAs, or otherwise governed by a cost docket order." *See* Exhibit E-N, p. 3 (footnote added). Qwest does not identify such elements, and Eschelon is aware of none. Because of the difficulty of verifying Qwest's bills, it may be some time before Eschelon discovers the rates and may challenge them. Qwest may not like some of the rates approved by the Commission, or it may wish the Commission would have approved

⁶ *See, e.g.*, Exhibit E-9, pp. 18-24 & Exhibit E-17.

⁷ It is ironic that Qwest is asserting it will impose unspecified rates on Eschelon as of *April* 2002, when Qwest is not yet billing Eschelon accurately for rates that this Commission ordered Qwest to apply effective in June of 2002. Apparently, Qwest has the ability to bill retroactively on short notice when it benefits Qwest to do so.

additional rates, but that does not mean that the approved rates do not cover all elements or are otherwise inadequate.

Qwest attempts to formulate its letter as a request to negotiate an amendment and Eschelon's position as a "refusal" to do so. Its allegation that Eschelon is "refusing" to negotiate an amendment is, however, inconsistent with Qwest's representations in this case that an amendment is not required, as discussed. In addition, the manner in which Qwest delivered its message is inconsistent with a true desire to negotiate in good faith with Eschelon. Ongoing interconnection agreement negotiations are currently underway between Eschelon and Qwest. Those negotiations have dealt with other issues and have not yet reached discussion of Attachment 1 and rates under the new contract when it goes into effect. Linda Miles acts on behalf of Qwest in those negotiations. Just last week, Ms. Miles of Qwest contacted me directly regarding issues in the negotiations. In addition to the ongoing negotiations, the current interconnection agreement contains notice provisions. Qwest knows how and with whom to raise contract negotiation issues at Eschelon. Instead, for its November 14th letter, Qwest circumvented those processes and delivered its message directly to Eschelon's Vice President of Network Financial Management. A message that a monopoly will unilaterally impose unspecified rates on a date certain takes on a certain character when delivered directly to the CLEC representative receiving the bills. Particularly when telling that person that the current situation is "untenable," the letter and the manner of its delivery create concerns.

Perhaps staff could determine whether Qwest's statements in the record in this proceeding (*see* Tr. Vol. I, p. 31, line 21 – p. 32, line 4) are accurate.

2. Another Amendment Allegedly Is Required for Access to Special Request Process (see Ex. E-O).

Eschelon was very clear at the July 2002 workshop that it "has not opted in to any SGAT." *See, e.g.*, Exhibit 9, p. 20. Qwest knew that Eschelon was operating under its interconnection agreement with Qwest (based on the AT&T contract) in July, as it is now. At the July 2002 workshop, Qwest testified that Eschelon was free to use Qwest's publicly available Special Request Process, posted on Qwest's web site, to obtain access to alleged Advanced Intelligent Network ("AIN") features. Qwest said, for example:

"MR. CRAIG: So remote call forwarding is available as a switch-based feature. If Eschelon were to submit a special request, we will go through the special request process to make sure all the technical details and all of the technical feasibility issues are worked with the vendor, and we'll activate the feature."

See Tr. Vol. II, p. 303 line 21 – p. 304, line 2. *See also*:

"MR. BELLINGER: Okay.

Andy, I understood you to say the feature was available on switch and you would provide it?

MR. CRAIN: If it is, they could get it through a special request.

Id. p. 305, lines 20-24.”

Qwest also testified that the special request process was readily available to Eschelon on Qwest’s wholesale web site. For example, Qwest said:

“MR. BELLINGER: And this is documented on the Web site?

MR. CRAIG: I believe it’s part of the special request process that’s on the Web site.”

Id. p. 311, lines 12-15.⁸

After the July workshop, Eschelon believed that Qwest “had a take back to provide a list of switches in which the feature is activated to Eschelon, *see id.*, p. 313, lines 11-13 & 18-20.” *See* Exhibit E-B, Eschelon’s Late Filed Exhibit, Impasse Issues, p. 2 (Sept. 10, 2002). But, Qwest did not provide this information to Eschelon in its late filed exhibits. *See id.* After Eschelon later learned that Qwest would not provide this information, Eschelon followed Qwest’s instructions at the July workshop.⁹ Eschelon used the Special Request Process posted on Qwest’s web page to request access to Remote Access Forwarding. Although Eschelon disagrees that this is an AIN feature and does not agree that it should not be available with UNE-P, Eschelon relied on Qwest’s representations in this matter that it could at least use the Special Request Process. That

⁸ *See* Exhibit E-D (Aug. 15, 2001), pp. 16-17 (“Although Eschelon started raising this issue with Qwest more than a year and a half ago, Qwest could not tell Eschelon at the July 30-31, 2002 Arizona 271 workshop whether this feature is activated in any of its switches. It claimed that it has a process in place to make switch feature capability available and added that there may be some costs associated with it. If so, none of the many individuals at Qwest with whom Eschelon has dealt on this matter for a long period of time are trained on the process. They have not made it available to Eschelon. ***It appears that Qwest’s position now is that Eschelon must, at this late date, use the Special Request Process to receive a response as to the availability of Remote Access Forwarding capability in the switch. Several months ago, Eschelon referred specifically to the Nortel documentation showing that the feature is in the switch when requesting the feature to be clear that Eschelon was requesting the capability of the switch. As indicated, no one at Qwest directed Eschelon to this process. Instead, they indicated that the capability is simply unavailable, making completion of any such a process a futile effort.***”) (emphasis added).

⁹ If Qwest now claims that its statements assumed this Special Request Process was in place (despite Eschelon’s clear statements about its contract versus the SGAT), Qwest was less than forthcoming on this point. Eschelon and the staff were clearly asking Qwest to identify the requirements for obtaining this feature, and Qwest remained silent on this point, at best.

process is supposed to identify the costs of obtaining a feature, if Qwest is claiming that there is a cost.¹⁰

Qwest denied Eschelon's request, claiming (as with UNE-P) that a contract amendment is required. On November 18, 2002, Eschelon's service manager told the marketing person who submitted the special request:

"In reviewing your Interconnection agreement, it was determined that in order to use the Special Request process *Eschelon would need to add an amendment.*"

See Exhibit E-O (emphasis added). She then sent a form amendment to Eschelon. The form refers to SGAT provisions that are inapplicable to Eschelon's current interconnection agreement with Qwest.

The terms of the existing interconnection agreement, which was approved by this Commission, help demonstrate the inequity of Qwest's approach to unilaterally requiring contract amendments when doing so benefits Qwest. The Eschelon-Qwest interconnection agreement expressly states that unbundled switching includes AIN features. It says:

"Local Switching is the Network Element that provides the functionality Such functionality shall include all of the features, functions, and capabilities that the . . . switch is capable of providing The Local Switching function also provides access to . . . Advanced Intelligent Network ("AIN")."

Att. 3, ¶ 10.1.1. Apparently, Qwest is claiming that a change in law renders this language invalid. If so, the Qwest-Eschelon interconnection agreement provides that, when a rule or regulation renders language invalid, "the Parties will negotiate in good faith for replacement language." *Id.* at Part A, ¶ 6.1. Whenever Qwest determined that it would not provide AIN features as part of the switching function with UNE-P, Qwest did not obtain replacement language for this provision. Qwest simply unilaterally adopted the position that it would not provide AIN features and that Remote Access Forwarding was such a feature. Because CLECs do not have a monopoly or power over access to the

¹⁰ If that is the case, Qwest could have informed Eschelon of the charges when Eschelon first inquired about the remote access forwarding feature, so that Eschelon could have either paid or challenged them. Particularly if any such fees are large, the issue raised in October of 2000 by Mr. Beach of WorldCom becomes relevant once again. See Tr. Vol. I, p. 82 line 12 – p. 83 line 4 (Oct. 10, 2000). If there are no proprietary or other restrictions on an incumbent's ability to choose between providing a feature through the switch or through an AIN platform, the incumbent has an incentive to use the AIN platform to prevent competitors from winning customers who desire those features. If Qwest pays a right to use fee, it both has economies of scale that justify the cost and has the ability to recover the costs through recurring rates. In fact, some of those costs may already be accounted for in the recurring switch port rate. If, however, Qwest may choose to provide that same feature through an AIN platform, regardless of whether it is proprietary, small carriers without those same economies of scale are effectively precluded from providing through UNE-P the same feature that is available to Qwest retail customers. See Exhibit E-D, p. 17.

network, they cannot unilaterally enforce their positions. Qwest can require amendments to delay CLEC rights while immediately implementing its positions without such amendments.

Qwest currently includes Remote Access Forwarding (AFD/AFM) on its list of “Features, Products, & Services Unavailable with UNE-P Products” on its wholesale web site.¹¹ As Qwest has now articulated its position, posting of this list on the Qwest website is sufficient to deny CLECs access to this feature regardless of contract terms, but posting of its Special Request Process on the same website is insufficient to provide CLECs access to this feature.

It is now almost four months after the July workshop. It has been more than two *years* since Eschelon and WCOM raised the issue of access to Remote Access Forwarding and non-proprietary AIN features in this proceeding.¹² Eschelon still does not have access to Remote Access Forwarding or even an idea as to the alleged cost of obtaining it. Because of Qwest’s choice to provide this functionality through the AIN platform instead of activating it in the switch, Qwest retail may offer this feature to its customers while Eschelon still cannot offer it to its UNE-P customers. It appears that Qwest would like to delay providing at least a cost quote, as well as switch availability information, to Eschelon while this proceeding is pending.

So that the staff and Commission may make an informed decision, however, staff should require Qwest to provide the information requested at the workshop (a list of switches in which the feature is activated, *see* Tr. Vol. II, p. 313, lines 11-13 & 18-20) and a cost quote for activating the feature in its switches. For all of the reasons previously stated, the staff should also recommend that Remote Access Forwarding should be available with UNE-P.¹³

3. UNE-E Mechanization and Accurate Billing (see Ex. E-P).

At the July 2002 workshop, Eschelon and McLeod indicated that 100% of the bills for UNE-Eschelon (“UNE-E”)/UNE-McLeod (“UNE-M”)/UNE-Star are inaccurate.¹⁴ Unlike UNE-P, this product is still ordered, provisioned, and billed as resale.¹⁵ Both Eschelon and McLeod indicated that an interim credit/true-up process (to

¹¹ See <http://www.qwest.com/wholesale/pcat/unep.html> (click on “UNE-P Features Not Available” under “Optional Features” for UNE-P general information).

¹² See Tr., Vol. I, p. 82 line 12 – p. 83 line 4 (Oct. 10, 2000).

¹³ In its memorandum relating to UNE-E mechanization, Qwest claims that “the demand for UNE-E is on the decline now as new orders are nearly at a standstill (being replaced by UNE-P).” See Exhibit E-P, p.2. Ironically, at least as long as Qwest continues to refuse to provide Remote Access Forwarding (and other features) with UNE-P, this statement will remain untrue. Eschelon must continue to order UNE-E when customers request Remote Access Forwarding, because Qwest chooses to place the feature on AIN instead of activating it in its switches.

¹⁴ See, e.g., Exhibits E-12 & E-13 (Affidavits of Lynne Powers and Ellen Copley).

¹⁵ See AZ Tr. Vol. II, p. 302, lns 7-8; *see also id.* p. 301, lns 7-9; (FCC Ex. 11).

estimate the amount due instead of the billed resale rate) is used instead of accurate billing, although a long-term process was supposed to be developed to render accurate bills.¹⁶

Qwest responded that it was working on solutions to deliver accurate bills and that it believed it could provide accurate UNE-E/UNE-M/UNE-Star bills by the end of this year. Qwest testified:

“MS. DUBUQUE: This is Toni. I’d like to address where we are with the UNE-Star product, we are working right now with Eschelon on options for mechanizing the UNE-E billing process. And we have been meeting with them over the last three weeks. In fact, I think today is the day the final questions are being sent to Eschelon. They had a number of questions about the process and how we would go about converting their existing base. So that work is in progress with a ***commitment to mechanize the UNE-E billing by the end of the year.***”

Tr. Vol. II, p. 322, lines 2-12 (emphasis added). See also:

“MS. DUBUQUE: . . . One of the things we are continuing to work on is to make this process as transparent to Eschelon as possible. And in the last three days, we have come up with a solution that will make option 2 not something that will have to go through CMP. And Eschelon will be receiving a document today that will spell out that process.

We have also offered to convert their existing base of UNE-Star. In other words, we at Qwest will issue all of the orders that will convert their existing base in order to ensure that the mechanized billing will all be in place by the end of the year.

MS. POWERS: Question, Toni. ***Will those be record only changes to our base?***

MS. DUBUQUE: ***Yes, they will.***

MS. CLAUSON: Again, that was the commitment in November of 2000, to transparent to us convert the base to UNE-Star. ***So that’s not a new commitment. What you’ve added is now you’re saying you can do it by the end of the year?***

MS. DUBUQUE: ***Correct.***

MR. BELLINGER: Mechanized billing, they agree to do it by the end of the year.

MS. CLAUSON: If we agree to this option 2, which we haven’t seen yet.”

¹⁶ See AZ 271 Tr., Vol. II, p. 291, line 13 – p. 295, line 1 & p. 320, line 18 – p. 321, line 6; see Ex. 2 attached to Ex. E-9; see also Exhibit E-D, pp. 52-55.

See Tr. Vol. II, p. 332, line 20 – p. 333, line 19 (emphasis added).

After the workshop, Qwest presented its new option to Eschelon for converting customers to produce accurate bills. Despite two years of promised mechanization, the process was highly manual and, given the experience with Qwest's manual processes, would not be "transparent" to the customer. See Exhibit E-P, pp. 6-8 (and enclosures). Although Qwest testified that the changes to the base of customers would be record only work (*see above*), Qwest revealed after the workshop that it would use a manual process to attempt to avoid switch work and facility changes. Unless the Qwest typist remembers to manually add certain information to the order, the order would automatically go to the switch and/or facility assignment. No one would be prepared for this to happen, and an end user service affecting condition would occur. As the earlier Qwest documentation in Exhibit E-P shows, this is not the process, or "tool," that Qwest indicated over a period of many months that it had been developing, and it does not meet Qwest's commitment to avoid adverse customer impact with a transparent conversion. The proposal also imposed a resource burden on Eschelon for work Qwest committed to do. See *id.* Eschelon asked Qwest to honor the commitments it had made with respect to this issue.

Eschelon did not receive a response from Qwest. After pursuing the issue, Qwest finally responded. Three and a half months after the July workshop at which Qwest indicated that it was working on implementing its commitment to Eschelon, Qwest sent a memorandum to Eschelon ***stating that Qwest's position now is that the commitment ended on March 1, 2002.*** See Exhibit E-P, p. 3. Qwest did not explain in the memorandum why Qwest testified in July that it was working on implementing a commitment then that allegedly ended four months earlier. In contrast, at the July 2002 workshop, Qwest did not mention an end date of March 1, 2002, and it reaffirmed the commitment to mechanize UNE-E:

“MS. CLAUSON: Again, that was the commitment in November of 2000, to transparent to us convert the base to UNE-Star. ***So that's not a new commitment. What you've added is now you're saying you can do it by the end of the year?***”

MS. DUBUQUE: ***Correct.***”

See Tr. Vol. II, p. 333, lines 12-17 (emphasis added).

The new version of events laid out in Qwest's November 14, 2002 memorandum is not only inconsistent with this Workshop testimony but also with Qwest documentation created contemporaneously with events at the time the commitment was made. In its November 14th memorandum, Qwest creates a version of events in which the parties agreed upon a manual process that "solved" the problem of UNE-E mechanization. See Exhibit E-P, p. 2 ("Background"). Then, only later, did Eschelon allegedly identify a need for UNE-E mechanization in "an ongoing series of discussions involving executives

of both companies.” *See id.* Compare this new version of events with Qwest’s own contemporaneous description, in which the manual process was always interim (as an integral part of “the DEAL”) in the short-term and always intended to be replaced by a mechanized process in the long-term:

Freddie Pennington (product Management) will elaborate more at today's meeting, BUT here's some of that information that I promised you regarding the internal efforts of Qwest ***to implement the DEAL***:

Qwest has identified a Process Implementation CORE team to develop short and long-term solutions.

Most of the ***short term objectives*** have been completed and implemented.

.

How will Eschelon be billed? ***Qwest continues to bill lines, features at Resale rates through existing resale billing process.***

.

Other short-term areas of concern that are being addressed are:

.

Long-term areas of concerns that have teams developing solutions:

Identify existing and new USOCs necessary to bill new product platform

.

Develop billing process for flat-rated UNE-Deal

.

See Exhibit 2 to Powers Affidavit (AZ Ex. E-12); *see also* AZ Tr. Vol. II, p.323, lns 1-15; *see also* enclosures to Exhibit E-P (in which Qwest describes the “tool” it was allegedly developing to convert the base without the manual work now being proposed).

Qwest’s own documentation establishes that interim and long-term processes were always envisioned by the parties. At least Qwest recognized this at the workshop and said it was working on a solution. The solutions proposed to date do not sufficiently protect end user customers from adverse impact, but at least proposals were being made. Now, almost four months after the Workshop, Qwest is not even recognizing that there is something to discuss.

In addition, Qwest interjected a new and unreasonable demand relating to DMOQs. In its letter of November 14, 2002, Qwest states:

“Qwest ***demands*** that Eschelon affirmatively acknowledge that, in rejecting the mechanization, Eschelon knowingly and intentionally ***compromises any further claim for DMOQs based on UNE-E billing*** (at least insofar as it relates to the lack of mechanization).”

See Exhibit E-P, p. 3 (emphasis added). Eschelon has not rejected mechanization. Eschelon has simply asked Qwest to abide by its commitments to mechanize in a manner that is transparent to Eschelon and its end user customers – a commitment recognized by Qwest at the July workshop. Now, Qwest “demands” that Eschelon both expose its customers to undue risk of adverse impact and give up its ability to enforce DMOQs relating to billing accuracy. This is a big step backwards from Qwest’s position at the Workshop that it would work with Eschelon to implement a solution for a transparent conversion by the end of the year.

Perhaps staff could determine whether Qwest will provide a workable solution.

4. Threats to Disrupt and Disconnect Service (see Ex. E-Q).

Qwest has been sending collection letters to Eschelon’s billing group that provide very little information about the alleged debt but nonetheless indicate Qwest may disrupt or disconnect service. *See, e.g.*, Exhibit E-Q. For example, on October 10, 2002, Qwest sent to Eschelon a letter that states:

“If Qwest does not receive this amount in our office by October 24, 2002, we will take action with respect to your accounts, including, but not limited to, suspension of service orders and the disconnection of services.”

See Exhibit Q-R. Based on little information and only 14 days notice from the mailing date of the letter, Qwest said that it “will take action” including “suspension of service orders and the disconnection of services.” *See id.* With its monopoly power and position as Eschelon’s only vendor in many cases, Qwest’s statements must be taken seriously.

The Qwest-Eschelon interconnection agreement describes remedies for late payment, but those remedies do not include disruption of service or disconnection. (*See* Part A, Section 3.)¹⁷ Such remedies would be particularly inappropriate, in any event, based on so little information and notice. Eschelon has objected to this practice to Qwest’s billing representatives,¹⁸ service manager,¹⁹ and attorneys.²⁰ Eschelon also asked Qwest’s attorneys to forward the issue to any additional appropriate personnel at Qwest who can deal with this issue. On October 11, 2002, Eschelon sent an email to Qwest’s attorneys and billing representatives regarding Qwest’s collection letters:

¹⁷ With respect to late payment charges, Qwest has represented to the FCC that it is not assessing those charges. Qwest said: “Of note, if a CLEC is late in its bill payment, since January 2002, Qwest has not charged CLECs any late payment charges.” Notarianni & Doherty Reply Decl. ¶ 224 (filed in this docket on July 29, 2002). (Qwest should not single out Eschelon for different treatment. *See* Exhibit E-D, p. 52.) To state that late payment charges are not being applied without mentioning that, instead, the carrier is suggesting service will be disrupted or disconnected leaves a different impression from Eschelon’s actual experience.

¹⁸ Scott Martin, Robert Martin, Julie Tigges, Susan Hutchins, and Terrell Cloke at Qwest.

¹⁹ Jean Novak at Qwest.

²⁰ Richard Corbetta and Jason Topp at Qwest and Mark Myhra, outside counsel for Qwest.

The letters state, for example, that "further collection action" could include "an interruption in the processing of LSRs and eventual service disruption." The letters are generic and contain a lump sum with no detail as to the basis for the lump sum payments so cannot be verified. (When Eschelon attempts to discuss the billing issues with Qwest, its representatives state that they do not have access to BillMate, the format in which Eschelon receives its bills. This makes reconciliation even more difficult.) In its letters, Qwest cites no authority in the contracts or the law for Qwest's collection practices, intervals stated in the letter, and anti-competitive threats. If Qwest plans to continue this practice, Qwest needs to follow the law and, if any such collection practice is allowed, provide a the breakdown of the amount due showing the basis for the claim (and not a lump sum that cannot be verified), cite the specific authority for each action Qwest states it may take, and follow all notice and other procedures required by the applicable contract and laws for each state. The letters sent to date do not constitute notice at all because they were not sent to the proper addresses under the notice provisions of the contracts (which, in at least MN, require a copy to the commission) or any of these other procedures.

Please provide your specific citations to the contractual and legal authority in each state (AZ, CO, MN, OR, UT, WA) for Qwest's claim that it can engage in these collection practices. Eschelon's contract provides for certain practices, such as in some cases late payment charges (see MN, Att. 7, para. 15). With respect to late payment charges, however, Qwest has represented to the FCC that it is not assessing those charges, and Qwest cannot single out Eschelon for different treatment. Eschelon has not located any provision in any interconnection agreement allowing Qwest to disrupt Eschelon's service. Qwest's threats to do so are extremely serious and are taken as such at Eschelon. We need assurance that Qwest will not disrupt our service.

Please provide a prompt response to this important issue. If you will not be handling this matter, please let me know who at Qwest will be doing so.

See Exhibit E-Q.

Although Qwest indicated that it would respond within a week or so to Eschelon's request, Qwest has not yet responded.

Qwest did rescind some of these letters on an individual basis. This individual action, however, does not address Qwest's policy and whether Qwest will continue to send letters containing such language without citing a basis for it or providing detail as to the amount allegedly due. For example, Qwest at least temporarily rescinded its letter of September 30, 2002 on an individual basis but reserved the right to take further collection action. With respect to the letter received October 10, 2002, Eschelon believed it had a

reasonable basis to continue disputing the charges but paid the claim under protest to avoid the consequences outlined by Qwest in the letter (*see* above). As Eschelon has indicated to Qwest, Eschelon is concerned about the right hand not knowing what the left hand is doing at Qwest so that a disruption in service occurs because someone at Qwest was not notified of the "rescission."

If there are circumstances that the law recognizes as warranting disruption of service or disconnection using Qwest's current process upon which Qwest relies, Qwest should identify those laws and follow their procedural provisions. More is needed than letters with lump sum amounts that do not provide factual or legal bases for the statements to disconnect or disrupt service and do not follow necessary procedural steps. Eschelon's request that Qwest provide a basis for its statements (and, if none, to cease making them in the current manner) is reasonable.

Perhaps the staff can obtain a response from Qwest to Eschelon's questions about the basis for Qwest's statements and the approach Qwest has taken.

5. Denial of Request to Opt-in to McLeod 2002 Rates (see Exs. E-R & E-S).

At the July 2002 workshop, McLeod described agreements with Qwest under which Qwest had stopped making payments. *See, e.g.*, Tr. Vol. II, p. 320, line 12 – p. 321, line 11. Qwest suggested that this was simply a matter of late payments. *See, e.g.*, Tr. Vol. II, p. 316, lines 22 – p. 317, line 16. Since then, Qwest has terminated agreements with McLeod and entered into a new 2002 amendment with McLeod that provides McLeod with new, lower rates for UNE-M/UNE-Star. *See* Exhibit E-R, pp. 1-2. Eschelon sent Qwest a written request to opt-in to the McLeod rates. *See id.* pp. 3- 4. Qwest denied Eschelon's request. *See id.* pp. 5-6.

As the basis for its denial of Eschelon's request to pick-and-choose provisions of McLeod's agreement for opt-in, Qwest pointed to differences in the McLeod and Eschelon Amendments that are allegedly integral to the agreements so that they cannot be separated from the rates for purpose of the pick-and-choose rule. *See id.* pp. 5-6. Qwest pointed to the "minimum line commitments" in the Amendments (which it now refers to as "volume" commitments) and a couple of features. In 2000, however, Qwest offered identical rates to Eschelon and McLeod, despite these differences in the Amendments. For example, in Eschelon's 2000 UNE-E amendment (filed with the Arizona commission in fall of 2000), Eschelon agreed to minimum line commitments ranging from 50,000 lines to 200,000 lines. *See* Exhibit E-S (Interconnection Agreement Amendment Terms, Nov. 15, 2000, ¶2.3). Also in the fall of 2000, McLeod agreed to larger minimum line commitments. *See* Exhibit E-S (McLeod Amendment, Oct. 26, 2000, ¶2.3). McLeod's minimum line commitments started with a minimum of 275,000 lines. *See id.* Despite the difference in this and some other terms of the Eschelon and McLeod UNE-E and UNE-M amendments, the rates were identical. *Compare* Exhibit E-S(a) (McLeod Amendment, ¶2.3) *with* Exhibit E-S(b) (Eschelon Amendment, ¶2.3).

Qwest did not alter the McLeod 2000 minimum line commitments or the features of UNE-M when it entered into a new 2002 amendment with lower rates. Pursuant to the pick-and-choose provisions of the federal Act, Eschelon has proposed to opt-in to those rates.²¹ With the proposed opt-in, Eschelon's minimum line commitments and the features of UNE-E would not change from 2000, just as McLeod's minimum line commitments and the features of UNE-M did not change from 2000. The UNE-E and UNE-M rates were identical then, and under Eschelon's request, the rates would also be identical now. Qwest, however, has denied Eschelon's request.

Perhaps the staff can obtain from Qwest a clarification of these issues, in light of statements that Qwest has made publicly and in this proceeding²² about the availability of opt-in and pick-and-choose options for filed agreements.

6. Choice Between 271 Participation and Full Cooperation (see Ex. E-T).

Qwest's senior service manager for the Eschelon account recently informed Eschelon that, once Eschelon "raises an issue" in a 271 proceeding, Eschelon has to get answers from Qwest on those business issues through the regulatory process. *See* Ex. E-T. Eschelon confirmed this statement in writing and asked Qwest, if there was any misunderstanding at all about her or Qwest's position on this issue, to clear it up immediately. *See id.* Qwest did not respond, indicate that there was any misunderstanding, or suggest that Qwest's position was otherwise. *See id.* In the particular situation in which this broader issue arose, Qwest's service management team agreed to respond to Eschelon's carrier relations manager about the root cause analysis for examples in a spreadsheet by a particular date. The date came and went with no response from Qwest service management. Later, when Eschelon asked about the deadline and whether a response would be received from Qwest, Qwest provided the described response. Instead of providing the data that had been promised earlier, Qwest's service manager sent Eschelon's carrier relations manager to Eschelon's regulatory department so that Eschelon had to try to find the Qwest response in Qwest's numerous filings with the FCC.

Qwest is the party that has raised a number of issues in the state and federal 271 proceedings, and many of these issues affect Eschelon. Eschelon should not have to be silent on those issues when Eschelon disagrees strongly with Qwest's assertions in those proceedings. At the same time, Eschelon should not have to surrender its ability to

²¹ Qwest indicates on its wholesale web site that: "You have the option to 'pick-and-choose' portions of other contracts to create an agreement." *See* http://www.qwest.com/wholesale/clecs/clec_index.html.

²² *See, e.g.,* Response of Qwest Corporation to Staff's Request for Comment, T-00000A-97-0238 (June 27, 2002), p. 4 (Qwest said: "This commitment ensures compliance with any reasonable standard under Section 252, triggering Commission review under Section 252(e) and ***adoption rights under 252(i)***. Consequently, CLECs have the full protection of Section 252 to access interconnection services and unbundled network elements ***under Section 251***. . . ." (emphasis added).

attempt to work through business issues with the service management team while the very lengthy proceedings are pending. The industry is regulated, and regulatory proceedings will inevitably be pending. As Eschelon said to Qwest, however, doing business through regulatory proceedings alone can cause delay. *See id.* The business may need the information before a particular deadline in a regulatory matter. The issues in the pending proceedings are also broader than the responses sought by Eschelon, and Eschelon does not have the resources to wade through all of that information to find each relevant response. Qwest has far more resources than Eschelon for addressing issues and participating in the proceedings. With its relatively vast resources, Qwest can produce hundreds and even thousands of pages of FCC and regulatory filings, and Eschelon has few resources to go find the needle in a haystack.

Eschelon asked Qwest to provide an assurance that Qwest will not impede Eschelon's business rights due to Eschelon's participation in 271 proceedings. Perhaps staff can obtain that information.

Eschelon appreciates the opportunity to raise these issues in this proceeding.

Sincerely,

Karen L. Clauson
Sr. Director of Interconnection
(612) 436-6026

cc: Service List (letter), by U.S. mail
Arizona email distribution list (letter and exhibits), by email
Filed with the Arizona Corporation Commission and staff (letter and exhibits),
by overnight delivery
Letter and exhibits sent to Qwest, by overnight delivery